U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

D6

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 29 2005

EAC 03 221 52526

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Chile, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The acting director denied the petition after determining that the petitioner and the beneficiary had not personally met within the two-year period immediately preceding the date of filing of the petition, as required by section 214(d) of the Act. *Decision of the Acting Director,* dated June 7, 2004.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

> (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
>
> (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
>
> (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiancé(e) petition:

> . . . shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival. . . .

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting if it is established that compliance would:

> (1) result in extreme hardship to the petitioner; or
>
> (2) that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice.

The regulation at section 214.2 does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on July 26, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 26, 2001 and ended on July 26, 2003.

At the time of filing, the petitioner stated he had not previously met the beneficiary and that he wished her to come to the United States "to see whether we wish to be married within the 90 days granted." Therefore, the evidence of record does not establish that the petitioner has met all the requirements of section 214(d) of the Act, 8 U.S.C. 1184(d). Specifically, he did not meet with the beneficiary during the two-year period immediately preceding his filing of the Form I-129 and his statements at the time of filing do not indicate that he has a "bona fide intention" to marry the beneficiary within 90 days of her arrival in the United States.

At the time of filing, the petitioner indicated that his concerns for his safety in Chile precluded his travel during the two-year period that immediately preceded his filing of the Form I-129F. In response to the director's request for evidence, he also stated that travel to Chile would have imposed a physical hardship on him, submitting a letter from his physician that indicated prolonged travel would negatively affect the petitioner's health.

However, while section 214(d) of the Act requires that the petitioner and beneficiary have met between July 26, 2001 and July 26, 2003, it does not stipulate that their meeting have occurred in the beneficiary's home country. Therefore, as the petitioner's reasons for not meeting with the beneficiary stressed the effect of a lengthy air flight on his health and his safety concerns in the wake of the kidnapping of Americans in South America, the AAO has reviewed the record to determine whether he and the beneficiary explored options for a meeting outside Chile and/or the region, including the beneficiary traveling to the United States.

On appeal, the petitioner states that the beneficiary lacked the assets and property necessary to apply for a visitor's visa to the United States. However, the AAO notes that foreign nationals without assets and property routinely submit nonimmigrant visa applications. As a result, the petitioner's assertion that the beneficiary could not apply for a visa to visit him in the United States is not persuasive. Further, there is no evidence in the record that the petitioner and beneficiary explored the possibility of meeting in countries bordering or near the United States, locations that would not have raised the security and health concerns that the petitioner indicated were posed by travel to Chile.

Taking into account the totality of the circumstances, as presented by the petitioner, the AAO does not find the record to establish that compliance with the meeting requirement would have resulted in extreme hardship to the petitioner or would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the circumstances that exempt a petitioner from the meeting requirement of section 214(d) of the Act.

The AAO also finds that the petitioner's statements at the time of filing indicate no firm intention on his part to marry the beneficiary within 90 days of her arrival in the United States, as required for the approval of a fiancée petition under section 214(d) of the Act. The petitioner stated only that he wished to bring the beneficiary to the United States to see whether they wished to get married within 90 days of her arrival.

For both these reasons, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.